

Jul 05, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTONDERICK S.¹,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,
Defendant.

No. 4:21-CV-05108-SAB

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT;
DENYING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are Cross-Motions for Summary Judgment. ECF Nos. 14, 17. The motions were heard without oral argument. Plaintiff is represented by Chad L. Hatfield; Defendant is represented by Kelly Arefi and Timothy M. Durkin.

Plaintiff brings this action seeking judicial review of the Commissioner of Social Security's final decision denying his application for Supplemental Security Income (SSI) under Title XVI of the Social Security Act, 42 U.S.C. §§ 1382. After reviewing the administrative record and briefs filed by the parties, the Court is now

¹ Pursuant to the recommendation of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, Plaintiff's name is partially redacted.

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~1**

1 fully informed. For the reasons set forth below, the Court grants Plaintiff's Motion
2 for Summary Judgment, ECF No. 14, and denies Defendant's Motion for Summary
3 Judgment, ECF No. 17.

4 **I. Jurisdiction**

5 On June 11, 2018, Plaintiff filed an application for Supplemental Security
6 Income (SSI) under Title XVI of the Social Security Act. He alleged disability
7 beginning September 1, 2010. Plaintiff's applications were denied initially and on
8 reconsideration. On February 28, 2019, Plaintiff requested a hearing before an
9 Administrative Law Judge ("ALJ"). On October 13, 2020, Plaintiff appeared and
10 testified by telephone before ALJ Mark Kim, with the assistance of his counsel,
11 Chad Hatfield. Vocational Expert Sharon Welter also participated by telephone.
12 The ALJ issued a decision on November 24, 2020, finding Plaintiff was not
13 disabled.

14 Plaintiff requested review by the Appeals Council; the Appeals Council
15 denied the request on May 21, 2021. The Appeals Council's denial of review
16 makes the ALJ's decision the "final decision" of the Commissioner of Social
17 Security, which this Court is permitted to review. 42 U.S.C. § 405(g),
18 1383(c)(1)(3).

19 Plaintiff filed a timely appeal with the United States District Court for the
20 Eastern District of Washington on July 23, 2021. ECF No. 1. The matter is before
21 this Court pursuant to 42 U.S.C. § 405(g).

22 **II. Five-Step Sequential Evaluation Process**

23 The Social Security Act defines disability as the "inability to engage in any
24 substantial gainful activity by reason of any medically determinable physical or
25 mental impairment which can be expected to result in death or which has lasted or
26 can be expected to last for a continuous period of not less than twelve months." 42
27 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be
28 under a disability only if their impairments are of such severity that the claimant is

1 not only unable to do their previous work, but cannot, considering claimant's age,
2 education, and work experiences, engage in any other substantial gainful work that
3 exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). The
4 Commissioner has established a five-step sequential evaluation process to
5 determine whether a person is disabled in the statute. See 20 C.F.R. §§
6 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v).

7 **Step One:** Is the claimant engaged in substantial gainful activities? 20
8 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). Substantial gainful activity is work
9 done for pay and requires compensation above the statutory minimum. *Keyes v.*
10 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in
11 substantial activity, benefits are denied. 20 C.F.R. § 404.1520(b), 416.920(b). If
12 the claimant is not, the ALJ proceeds to step two.

13 **Step Two:** Does the claimant have a medically-severe impairment or
14 combination of impairments? 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). A
15 severe impairment is one that lasted or must be expected to last for at least 12
16 months and must be proven through objective medical evidence. *Id.* §§ 404.1509,
17 416.909. If the claimant does not have a severe impairment or combination of
18 impairments, the disability claim is denied. *Id.* § 404.1520(a)(4)(ii),
19 416.920(a)(4)(ii). If the impairment is severe, the evaluation proceeds to the third
20 step.

21 **Step Three:** Does the claimant's impairment meet or equal one of the listed
22 impairments acknowledged by the Commissioner to be so severe as to preclude
23 substantial gainful activity? 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If
24 the impairment meets or equals one of the listed impairments, the claimant is
25 conclusively presumed to be disabled. 20 C.F.R. §§ 404.1520(d), 416.920(d). If the
26 impairment is not one conclusively presumed to be disabling, the evaluation
27 proceeds to the fourth step.

28 Before considering to the fourth step, the ALJ must first determine the

claimant's residual functional capacity. An individual's residual functional capacity is their ability to do physical and mental work activities on a sustained basis despite limitations from their impairments. 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The residual functional capacity is relevant to both the fourth and fifth steps of the analysis.

Step Four: Does the impairment prevent the claimant from performing work they have performed in the past? 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the claimant is able to perform their previous work, they are not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the claimant cannot perform this work, the evaluation proceeds to the fifth and final step.

Step Five: Is the claimant able to perform other work in the national economy in view of their age, education, and work experience? 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). The initial burden of proof rests upon the claimant to establish a prima facie case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098 (9th Cir. 1999). This burden is met once a claimant establishes that a physical or mental impairment prevents him from engaging in her previous occupation. *Id.* At step five, the burden shifts to the Commissioner to show that the claimant can perform other substantial gainful activity. *Id.*

III. Standard of Review

The Commissioner's determination will be set aside only when the ALJ's findings are based on legal error or are not supported by substantial evidence in the record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992) (citing 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla," *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance," *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson*, 402 U.S. at 401.

A decision supported by substantial evidence will be set aside if the proper

1 legal standards were not applied in weighing the evidence and making the decision.
 2 *Browner v. Sec'y of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988).
 3 An ALJ is allowed “inconsequential” errors as long as they are immaterial to the
 4 ultimate nondisability determination. *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d
 5 1050, 1055 (9th Cir. 2006). The Court must uphold the ALJ’s denial of benefits if
 6 the evidence is susceptible to more than one rational interpretation, one of which
 7 supports the decision of the administrative law judge. *Batson v. Barnhart*, 359 F.3d
 8 1190, 1193 (9th Cir. 2004). It “must consider the entire record as a whole,
 9 weighing both the evidence that supports and the evidence that detracts from the
 10 Commissioner’s conclusion, and may not affirm simply by isolating a specific
 11 quantum of supporting evidence.” *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.
 12 2017) (quotation omitted). “If the evidence can support either outcome, the court
 13 may not substitute its judgment for that of the ALJ.” *Matney*, 981 F.2d at 1019.

14 For claims filed on or after March 27, 2017,² like the present claim, new
 15 regulations apply regarding the evaluation of medical evidence. Revisions to Rules
 16 Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5844 (Jan. 18, 2017);
 17 see *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir. 2022). The new regulations eliminate
 18 any semblance of a hierarchy of medical opinions and state that the agency does
 19 not defer to any medical opinions. 20 C.F.R. §§ 404.1520c(a), 416.920c.

20 Specifically, the rules eliminate the agency’s “treating source rule,” which gave
 21 special deference to certain opinions from treating sources. 82 Fed. Reg. at 5853.
 22 In articulating the ALJ’s consideration of medical opinions for persuasiveness, the
 23 ALJ considers the following factors: (1) Supportability and (2) Consistency; (3)
 24 Relationship with the claimant, including (i) length of treatment relationship; (ii)

25
 26 ² For claims filed prior to March 27, 2017, an ALJ was to give more weight to “those
 27 physicians with the most significant clinical relationship with the plaintiff.”
 28 *Carmickle v. Comm’r*, 533 F.3d 1155, 1164 (9th Cir. 2008).

1 frequency of examinations; (iii) purpose of the treatment relationship; (iv) extend
2 of the treatment relationship; (v) examination relationship; (4) Specialization; and
3 (5) Other factors, including whether the medical source has familiarity with the
4 other evidence or an understanding of SSA's disability program's policies and
5 evidentiary requirements. 20 C.F.R. §§ 404.1520c(b), 416.920c(b). The most
6 important factors in evaluating the persuasiveness of medical opinions are
7 supportability and consistency. 20 C.F.R. §§ 404.1520c(a), 416.920c(a).

8 Supportability and consistency are further explained in the regulations:

9 (1) *Supportability*.

10 The more relevant the objective medical evidence and supporting
11 explanations presented by a medical source are to support his or her medical
12 opinion(s) or prior administrative medical finding(s), the more persuasive
the medical opinions or prior administrative medical finding(s) will be.

13 (2) *Consistency*.

14 The more consistent a medical opinion(s) or prior administrative medical
15 finding(s) is with the evidence from other medical sources and nonmedical
sources in the claim, the more persuasive the medical opinion(s) or prior
administrative medical finding(s) will be.

16 20 C.F.R. §§ 404.1520c(c); 416.920c(c).

17 When a medical source provides multiple medical opinions, the ALJ must
18 articulate how it considered these opinions in a single analysis applying the above-
19 listed factors. 20 C.F.R. §§ 404.1520c(b)(1), 416.920c(b)(1). If equally persuasive
20 medical opinions about the same issue are both equally well-supported and
21 consistent with the record, but are not exactly the same, the ALJ must articulate
22 how it considered the other most persuasive factors in making its decision. 20
23 C.F.R. §§ 404.1520c(c)(3), 416.920c(c)(3).

24 **IV. Statement of Facts**

25 The facts have been presented in the administrative record, the ALJ's
26 decision, and the briefs to this Court. Only the most relevant facts are summarized
27 herein.
28

1 It appears that when Plaintiff was in middle school, he experienced back
2 pain and was diagnosed with spina bifida occulta and degenerative disc disease, and
3 at some point, he was diagnosed with fibromyalgia.³

4 At the time of the hearing, he was 22 years old. He completed 11th grade
5 and has not earned his GED. He testified that he is unable to maintain regular,
6 continuous employment due to missing work because of bad days that occur one to
7 two times per week. He testified that his legs go numb after 10 minutes of
8 standing/walking. He also has lower back spasms if he sits too long. He testified
9 that while he used to play video games, he now needs to rest and rub his hands
10 after about 10 minutes due to cramping. He has difficulty going up stairs. He
11 testified the medication that has been prescribed takes the edge off, but the pain
12 does not totally go away.

13 Plaintiff attempted to work at his father's place of employment. He was
14 given latitude in the attendance requirements. He worked about seven months, but
15 then had to quit because he was missing too much work due to his back pain and
16 spasms.

17 **V. The ALJ's Findings**

18 The ALJ issued an opinion affirming denial of benefits. AR 15-28. At step
19 one, the ALJ found that Plaintiff has not engaged in substantial gainful activity
20

21 ³ In March 2017, an ALJ denied Plaintiff's application for SSI (when he was under
22 the age of 18). AR 160. In that Order, the ALJ noted that in February 2015,
23 rheumatologist Dr. Byrd reported that Plaintiff had a chronic pain disorder most
24 consistent with fibromyalgia. *Id.* Dr. Kiki then noted that Dr. Byrd had diagnosed
25 Plaintiff with fibromyalgia. *Id.* The ALJ pointed out, however, that there was no
26 documented treatment records, no documented basis for a diagnosis of
27 fibromyalgia under SSR 12-2p, and no documented testing of the fibromyalgia
28 tender points. *Id.*

1 since June 11, 2018. AR 17.

2 At step two, the ALJ identified the following severe impairments:
3 degenerative disc disease of the lumbar spine; spina bifida; and asthma. AR 18.

4 At step three, the ALJ found that Plaintiff did not have an impairment or
5 combination of impairments that meets or medically equals the severity of one of
6 the listed impairments. AR 21. Specifically, the ALJ concluded that Plaintiff did
7 not meet listings 1.04, and 3.03. Ultimately, the ALJ concluded that Plaintiff has a
8 residual function capacity (“RFC”) to perform:

9 light work as defined in 20 CFR 416.967(b) except he must be
10 allowed to alternate from a standing to a sitting position on an hourly
11 basis for 5 minutes while staying on task; he can never climb ladders,
12 ropes, or scaffolds; he can occasionally stoop, kneel, crouch, crawl, or
13 climb flights of stairs; he must avoid all exposure to pulmonary
14 irritants such as dust and smoke in excess of an office setting; he must
15 avoid hazards such as dangerous moving machinery and unprotected
16 heights; he must avoid occasional exposure to extreme cold; and he is
17 limited to simple, routine, unskilled tasks.

18 AR 21.

19 At step four, the ALJ found that Plaintiff was unable to perform past
20 relevant work. AR 26.

21 At step five, the ALJ found that Plaintiff was not disabled and capable of
22 performing work that exists in significant numbers in the national economy. AR
23 28.

24 VI. Issues for Review

- 25 1. Whether the ALJ properly evaluated the medical opinion evidence?
- 26 2. Whether the ALJ properly evaluated Plaintiff’s symptom testimony?
- 27 3. Whether the ALJ conducted an adequate analysis at Steps Four and
28 Five?

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V. Analysis

1. Fibromyalgia and Spina Bifida

While the ALJ found that Plaintiff had a severe impairment of spina bifida, it also found that fibromyalgia was not medically determinable. Plaintiff was seen by Dr. Wei-Hsung in August 2020. Although not mentioned by the ALJ, Dr. Wei-Hsung noted that Plaintiff had significant pain from the fibromyalgia with pain and tenderness along the paraspinous muscles and the shoulders behind the occiput. On the other hand, Dr. Weir provided a consultative physical examination in August 2018. Apparently, Dr. Weir examined Plaintiff and found no positive tender points and found that Plaintiff had no functional limitations. The ALJ seemingly accepted Dr. Weir's opinion without taking into consideration Dr. Wei-Hsung supported, but differing opinion. Moreover, the record is consistent that Plaintiff has been treated with pain medication for his fibromyalgia for many years.

The ALJ erred failing to identify why Dr. Weir's opinion was more persuasive than Dr. Wei-Hsung. On remand, the ALJ shall reevaluate Dr. Wei-Hsung's opinion and reevaluate whether fibromyalgia is a severe impairment.

In a similar vein, the ALJ failed to consider the effects of Plaintiff's spina bifida and his pain symptoms. Spina bifida is a defect that occurs when the neural tube in a developing fetus does not close as it should, resulting in malformation of the spinal column and mild to severe damage to the spinal cord and nerves. The severity of the resulting disability depends on the size and location on the spinal cord, and the extent of damage to the spinal cord or nerves. Spina bifida occulta, sometimes called hidden spina bifida, consists of a small opening in the spine without an opening or sac on the back. Spina bifida occulta frequently results in no damage to the spine or nerves.⁴

⁴www.cdc.gov/ncbddd/spinabifida/facts.html (accessed June 27, 2022).

1 While spina bifida occulta in most cases is asymptomatic, symptoms among
 2 the population may include back pain, enuresis, motor or sensory dysfunction, and
 3 posterior disc herniation.⁵ The ALJ failed to address whether Plaintiff's diagnosis
 4 of spina bifida would explain or account for Plaintiff's pain symptoms. Moreover,
 5 the ALJ erred when it failed to consider whether Plaintiff's spina bifida meets or
 6 equals the Listings, including Listing 11.08.

7 **2. Evaluation of Medical Opinion Evidence**

8 **A. Physical Therapist Katherine L. Wells**

9 Ms. Katherine Wells completed a functional capacity evaluation in January
 10 2019. AR 513-536. The report appears to be signed and dated on the last page. *See*
 11 AR 536. The report included Plaintiff's description of his symptoms as well as
 12 objective testing of Plaintiff's lifting strength, posture, flexibility, ambulation, hand
 13 grip strength, and coordination. Ms. Wells observed that Plaintiff's posture became
 14 worse as he became fatigued. She noted that while his gait started fairly smoothly
 15 and equally, as fatigued increased, the pattern and smoothness decreased with
 16 reported pain. She observed spasms occurring several times during the session. She
 17 found limited range of motion with his trunk. He needed a chair in front of him for
 18 support to flex his trunk. He had reduced range of motion and muscle strength with
 19 internal rotations of his hip. He had difficulty with knee squats. Plaintiff reported
 20 to Ms. Wells that the pain shoots up his left leg greater than his right leg and the
 21

22
 23 ⁵Kamanli A., Genc H., *Radiological Abnormalities of the Lumbosacral Spine in*
 24 *Young Male Individuals*, 16 J. Back Musculoskeletal Rehabil 91–94 (2002);
 25 Avrahami E., Frishman E., Fridman Z., Azor M., *Spina Bifida Occulta of S1 is not*
 26 *an Innocent Finding*, 19 Spine, 12–15 (1994); Petronic I., Nikolic D., Cirovic D.,
 27 *Distribution of Affected Muscles and Degree of Neurogenic Lesion in Patients with*
 28 *Spina Bifida*. 7 Arch Med Sci. 1049–1054 (2011).

1 pain generally radiates to his foot or toes, with occasional numbness. Plaintiff also
2 reported that pain generally radiated to his hand or finger, with numbness.

3 Ms. Wells summarized that “[b]ased on subjective and objective testing, the
4 patient presents with pain that impacts all functional activities.” AR 536. She also
5 stated that there was “[e]xcellent rehab potential *to reach the established goals.*”
6 *Id.* (emphasis added).

7 The ALJ found this evaluation not persuasive because the report did not
8 appear to be formally endorsed by Ms. Wells. AR 26. The ALJ believed the report
9 was missing her signature and date. Also, the ALJ concluded the report did not
10 clearly indicate functional limitations for a continuous 12-month period because
11 Ms. Wells noted that Plaintiff had “‘excellent’ rehabilitation potential.” The ALJ
12 concluded that Ms. Wells’ functional evaluation was not probative as opinion
13 evidence.

14 The ALJ erred in evaluating Ms. Wells’ Functional Evaluation. First, as
15 Defendant concedes, Ms. Wells did sign and date her report. Also, there is nothing
16 in the record to suggest that Plaintiff’s symptoms are temporary and to suggest
17 otherwise was disingenuous on the part of the ALJ. Finally, the ALJ failed to
18 consider Ms. Wells’ complete statement regarding whether Plaintiff had excellent
19 rehabilitation potential. As noted above, Ms. Wells was referring to Plaintiff’s
20 established goals and it is not clear what those goals were—was it to lessen his
21 daily pain or was it to rehabilitate so he could work full-time? The ALJ’s use of
22 Ms. Well’s incomplete statement to find her evaluation not persuasive was in error.
23 The ALJ erred in failing to provide substantive reasons for finding Ms. Well’s
24 functional evaluation not persuasive.

25 **B. Dr. Jeffrey Kiki, Plaintiff’s Treating Physician**

26 In January 2019 Dr. Kiki completed a DSHS evaluation and opined that
27 Plaintiff was severely limited and unable to work due to pain everywhere from
28 degenerative disk disease, spina bifida, and chronic back pain.

1 The ALJ found Dr. Kiki's opinion not persuasive because it believed Dr.
2 Kiki's opinion was not supported by his chart notes. Notably, the ALJ found that
3 Dr. Kiki had observed that Plaintiff was well-developed and well-nourished. The
4 ALJ concluded the record indicated that Plaintiff had little treatment of back pain
5 and had reported improvement with medications. The ALJ also believe that
6 Plaintiff's daily living activities demonstrated that he was more capable than Dr.
7 Kiki believed.

8 Contrary to the ALJ's conclusion, the record does not demonstrate any
9 sustained improvement. Rather, the longitudinal record shows that Plaintiff has
10 been prescribed medication to deal with his pain, with his pain generally measures
11 around a 6 out of 10, even with his pain medication. Also, the record is silent as to
12 the frequency or regularity that Plaintiff engages in the listed activities. For
13 instance, while the ALJ relied on the fact that Plaintiff helped organize his father-
14 in-law's garage, there is nothing in the record regarding the intensity or duration of
15 that activity. Finally, whether Plaintiff appeared well-developed and well-
16 nourished says nothing about whether Plaintiff's spina bifida, fibromyalgia, and
17 chronic back pain would prevent Plaintiff from engaging in full-time work.
18 Moreover, the Ninth Circuit has repeatedly stated that the ability to perform some
19 daily activities does not necessarily equate with the ability to perform full-time
20 work. *See Revels v. Berryhill*, 874 F.3d 648, 667-68 (9th Cir. 2017). Notably, there
21 is a critical difference between activities of daily living and activities in a full-time
22 job because in the former a person has more flexibility in scheduling, can get help
23 from other persons, and is not held to a minimum standard of performance.

24 **C. Dr. NK Marks, PhD and Dr. Aaron Burdge**

25 On January 10, 2019, Dr. Marks completed a psychological examination of
26 Plaintiff. Dr. Marks assessed Plaintiff with unspecified anxiety disorder and major
27 depressive disorder, recurrent episode, severe. Dr. Marks found severe limitations
28 in the ability to communicate and perform effectively in a work setting and marked

1 limitations in the abilities to adapt to changes in a routine work setting and set
2 realistic goals and plan independently.

3 Dr. Marks found that Plaintiff was severely depressed, had severe anxiety,
4 made minimal eye contact; had a depressed mood with consistent affect, limited
5 memory, limited concentration, and difficulty with abstract thought. Dr. Burdge
6 agreed with Dr. Marks' opinion.

7 The ALJ found Dr. Marks and Dr. Burdge's opinions to be not persuasive
8 because while their assessments were supported by Dr. Marks' examination
9 findings, Plaintiff presented differently at other times in the record. Many of the
10 instances identified by the ALJ were when Plaintiff was seeking medical treatment
11 for his back pain. Contrary to the ALJ's conclusions, Dr. Marks's opinion is
12 consistent with the longitudinal record and is supported by objective evidence. As
13 such, the ALJ erred in finding that Dr. Marks, and subsequently Dr. Burdge's
14 opinions to be not persuasive.

15 VI. Conclusion

16 For the reasons stated above, the ALJ's decision that Plaintiff is not disabled
17 is not supported by substantial evidence in the record because the ALJ improperly
18 evaluated certain medical opinions and in turn, improperly evaluated Plaintiff's
19 symptom testimony. For instance, Plaintiff testified that if he sits too long his back
20 spasms and his hands cramp up after use. Ms. Well's functional assessment
21 objectively supports this symptom testimony. On remand, the ALJ shall reevaluate
22 Ms. Well's functional evaluation, reevaluate Dr. Kiki's, Dr. Marks' and Dr. Wei-
23 Hsung's opinions, evaluate Plaintiff's fibromyalgia and spina bifida and its effects
24 on the ability to perform work activities, reassess Plaintiff's subjective allegations
25 and the lay witness evidence, reevaluate Plaintiff's residual functional capacity and
26 provide a rationale with specific references to evidence of record in support of
27 assessed limitations. The parties can address any remaining arguments on remand.

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**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT; DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT ~13**

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment, ECF No. 14, is
GRANTED.

2. Defendant's Motion for Summary Judgment, ECF No. 17, is
DENIED.

3. The decision of the Commissioner is **reversed** and **remanded** for
additional proceedings consistent with this Order.

4. Judgment shall be entered in favor of Plaintiff and against Defendant.

IT IS SO ORDERED. The District Court Executive is hereby directed to
file this Order, provide copies to counsel, and **close** the file.

DATED this 5th day of July 2022.



Stanley A. Bastian

Stanley A. Bastian
Chief United States District Judge